

ASSEMBLY BILL

No. 771

Introduced by Assembly Member Butler

February 17, 2011

An act to amend Section 1368 of the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

AB 771, as introduced, Butler. Common interest developments: requests for documents: fees.

The Davis-Stirling Common Interest Development Act requires an owner of a separate interest in a common interest development to provide specified documents to a prospective purchaser of that interest. Existing law requires a homeowners' association to provide these documents to the owner of the separate interest within 10 days of the mailing or delivery of the request and limits the amount of fees charged for the provision of the documents to the association's actual costs to procure, prepare, and reproduce the requested documents.

This bill would provide that the timeframe for the provision of, and the limitation of the amount of fees charged for, the specified documents also apply to an agent, as defined, of the association that provides the documents to an owner of a separate interest in a common interest development. This bill would also require an association or an agent of the association to provide a written estimate of the fees that will be assessed for the provision of the specified documents.

This bill contains legislative findings and declarations in support of the proposed changes.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature finds and declares:

(1) That subdivision (b) of Section 1368 of the Civil Code, which limits the amount of fees charged by an association of a common interest development for the provision of specified documents to a seller of a separate interest in a common interest development to a reasonable amount based upon the association's cost to procure, prepare, and reproduce the requested documents, was intended to apply to any person that provided the specified documents.

(2) That the decision of *Berryman v. Merit Property Management, Inc.* (2007) 152 Cal.App.4th 1544, in which the court held that subdivision (b) of Section 1368 of the Civil Code is limited to fees charged by the association of the common interest development and does not apply to an agent of the association, does not reflect the Legislature's intent to limit the amount of fees that may be charged for the provision of the specified documents.

(b) It is the intent of the Legislature that the amendments proposed by this act clarify the Legislature's original intent to unilaterally limit the amount of fees charged for the provision of specified documents to a seller of a separate interest in a common interest development to the association's cost to procure, prepare, and reproduce the requested documents.

SEC. 2. Section 1368 of the Civil Code is amended to read:

1368. (a) The owner of a separate interest, other than an owner subject to the requirements of Section 11018.6 of the Business and Professions Code, shall, as soon as practicable before transfer of title to the separate interest or execution of a real property sales contract therefor, as defined in Section 2985, provide the following to the prospective purchaser:

(1) A copy of the governing documents of the common interest development, including any operating rules, and including a copy of the association's articles of incorporation, or, if not incorporated, a statement in writing from an authorized representative of the association that the association is not incorporated.

(2) If there is a restriction in the governing documents limiting the occupancy, residency, or use of a separate interest on the basis of age in a manner different from that provided in Section 51.3, a statement that the restriction is only enforceable to the extent

1 permitted by Section 51.3 and a statement specifying the applicable
2 provisions of Section 51.3.

3 (3) A copy of the most recent documents distributed pursuant
4 to Section 1365.

5 (4) A true statement in writing obtained from an authorized
6 representative of the association as to the amount of the
7 association's current regular and special assessments and fees, any
8 assessments levied upon the owner's interest in the common
9 interest development that are unpaid on the date of the statement,
10 and any monetary fines or penalties levied upon the owner's
11 interest and unpaid on the date of the statement. The statement
12 obtained from an authorized representative shall also include true
13 information on late charges, interest, and costs of collection which,
14 as of the date of the statement, are or may be made a lien upon the
15 owner's interest in a common interest development pursuant to
16 Section 1367 or 1367.1.

17 (5) A copy or a summary of any notice previously sent to the
18 owner pursuant to subdivision (h) of Section 1363 that sets forth
19 any alleged violation of the governing documents that remains
20 unresolved at the time of the request. The notice shall not be
21 deemed a waiver of the association's right to enforce the governing
22 documents against the owner or the prospective purchaser of the
23 separate interest with respect to any violation. This paragraph shall
24 not be construed to require an association to inspect an owner's
25 separate interest.

26 (6) A copy of the preliminary list of defects provided to each
27 member of the association pursuant to Section 1375, unless the
28 association and the builder subsequently enter into a settlement
29 agreement or otherwise resolve the matter and the association
30 complies with Section 1375.1. Disclosure of the preliminary list
31 of defects pursuant to this paragraph does not waive any privilege
32 attached to the document. The preliminary list of defects shall also
33 include a statement that a final determination as to whether the list
34 of defects is accurate and complete has not been made.

35 (7) A copy of the latest information provided for in Section
36 1375.1.

37 (8) Any change in the association's current regular and special
38 assessments and fees which have been approved by the
39 association's board of directors, but have not become due and

1 payable as of the date disclosure is provided pursuant to this
2 subdivision.

3 (b) Upon written request, an association *or an agent of the*
4 *association* shall, within 10 days of the mailing or delivery of the
5 request, provide the owner of a separate interest with a copy of
6 the requested items specified in paragraphs (1) to (8), inclusive,
7 of subdivision (a). *Upon receipt of the written request, the*
8 *association or the agent of the association shall provide a written*
9 *estimate of the fees that will be assessed for the provision of the*
10 *documents.* The items required to be made available pursuant to
11 this section may be maintained in electronic form and requesting
12 parties shall have the option of receiving them by electronic
13 transmission or machine readable storage media if the association
14 maintains these items in electronic form. The association may
15 charge, *or the agent of the association may collect,* a reasonable
16 fee for this service based upon the association's actual cost to
17 procure, prepare, and reproduce the requested items.

18 (c) (1) Except as provided in paragraph (2), neither an
19 association nor a community service organization or similar entity
20 may impose or collect any assessment, penalty, or fee in connection
21 with a transfer of title or any other interest except for the following:

22 (A) An amount not to exceed the association's actual costs to
23 change its records.

24 (B) An amount authorized by subdivision (b).

25 (2) The prohibition in paragraph (1) does not apply to a
26 community service organization or similar entity, or to a nonprofit
27 entity that provides services to a common interest development
28 under a declaration of trust, that is described in subparagraph (A)
29 or (B):

30 (A) The community service organization or similar entity
31 satisfies both of the following requirements:

32 (i) The community service organization or similar entity was
33 established prior to February 20, 2003.

34 (ii) The community service organization or similar entity exists
35 and operates, in whole or in part, to fund or perform environmental
36 mitigation or to restore or maintain wetlands or native habitat, as
37 required by the state or local government as an express written
38 condition of development.

39 (B) The community service organization or similar entity, or a
40 nonprofit entity that provides services to a common interest

1 development under a declaration of trust, satisfies all of the
2 following requirements:

3 (i) The organization or entity is not an organization or entity
4 described in subparagraph (A).

5 (ii) The organization or entity was established and received a
6 transfer fee prior to January 1, 2004.

7 (iii) On and after January 1, 2006, the organization or entity
8 offers a purchaser the following payment options for the fee or
9 charge it collects at time of transfer:

10 (I) Paying the fee or charge at the time of transfer.

11 (II) Paying the fee or charge pursuant to an installment payment
12 plan for a period of not less than seven years. If the purchaser
13 elects to pay the fee or charge in installment payments, the
14 organization or entity may also collect additional amounts that do
15 not exceed the actual costs for billing and financing on the amount
16 owed. If the purchaser sells the separate interest before the end of
17 the installment payment plan period, he or she shall pay the
18 remaining balance prior to transfer.

19 (3) For the purposes of this subdivision, a “community service
20 organization or similar entity” means a nonprofit entity, other than
21 an association, that is organized to provide services to residents
22 of the common interest development or to the public in addition
23 to the residents, to the extent community common areas or facilities
24 are available to the public. A “community service organization or
25 similar entity” does not include an entity that has been organized
26 solely to raise moneys and contribute to other nonprofit
27 organizations that are qualified as tax exempt under Section
28 501(c)(3) of the Internal Revenue Code and that provide housing
29 or housing assistance.

30 (d) Any person or entity who willfully violates this section is
31 liable to the purchaser of a separate interest that is subject to this
32 section for actual damages occasioned thereby and, in addition,
33 shall pay a civil penalty in an amount not to exceed five hundred
34 dollars (\$500). In an action to enforce this liability, the prevailing
35 party shall be awarded reasonable attorneys’ fees.

36 (e) Nothing in this section affects the validity of title to real
37 property transferred in violation of this section.

38 (f) In addition to the requirements of this section, an owner
39 transferring title to a separate interest shall comply with applicable
40 requirements of Sections 1133 and 1134.

1 (g) For the purposes of this section, a person who acts as a
2 community association manager is an agent, as defined in Section
3 2297, of the association.

4 (h) *For purposes of this section “agent of the association”*
5 *means any person or entity performing services for, or acting on*
6 *behalf of, the association.*